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TAGS: PREL MARR UNSC AS JA
SUBJECT: UNSCR 1718 IMPLEMENTATION: JAPAN CAUTIOUS,
AUSTRALIA KEEN

REF: A. OSD/SCHLEIEN JANUARY 18 LETTER TO JAPAN MOFA/NISHI
1B. AUSTRALIA DFAT/PERKS

Classified By: Ambassador J. Thomas Schieffer, reasons 1.4 (b, d).

11. (C) SUMMARY: U.S., Japanese and Australian delegates to the Trilateral Working Group (WG) on Implementation of UN Security Council Resolution 1718 met in Tokyo January 24 to continue discussions on 1718 implementation including resolving outstanding legal and policy concerns over sanctions enforcement against vessels suspected of violating UNSCR 1718 and developing options for concrete trilateral action. A cautious Japanese delegation initially raised a number of concerns focused on international legal authorities to engage in U.S. proposed sanctions enforcement activities but seemed agreeable after discussions on all proposed activities that did not rely upon master consent or bunkering in the territorial sea for international legal authority to board and inspect a suspect vessel. The Japanese delegation expressed concerns, however, whether their national legislation authorized all proposed activities. The Australian delegation expressed less concern and thought they could find acceptable language justifying all activities as proposed by the United States if limited to the context of UNSCR 1718 enforcement sanctions. On options for trilateral action, Japanese officials raised concerns that a "capabilities demonstration" (exercise) could upset regional neighbors. Japan was also cautious about "scrutiny areas" but was relieved at the modest scale of operations envisioned, with MOD officials even suggesting Japanese P-3 aircraft support would be "doable" (naval vessels might also join, but in a role constrained by domestic law). Australian officials called for "demonstrable action" in concert with outreach. Australia also committed to host the next Trilateral WG in late March, which was subsequently scheduled for March 30, 2007. END SUMMARY.

12. (C) U.S., Japanese and Australian representatives to the Trilateral Working Group (WG) on Implementation of UN Security Council Resolution 1718 met in Tokyo January 24 to resolve outstanding legal and policy concerns over sanctions enforcement against vessels suspected of violating UNSCR 1718 and to develop options for concrete trilateral action. See para 20 for details on participants.

13. (C) The Japanese delegation, headed by Tomiko Ichikawa, Director of MOFA's Non-Proliferation, Science and Nuclear Energy Division, opened the Trilateral Working Group (WG) by

stating that, although the Six Party Talks process is ongoing, "now is not the time for the international community to relax implementation of 1718." Any actions recommended by the group to policy-makers, however, needed to remain within the scope of international law. Australian delegation head Murray Perks, from their Ministry of Defence, struck a slightly different tone, stressing the importance of concrete action to demonstrate the three countries' commitment to implementing 1718 sanctions. The U.S. emphasized the need to agree on options for action for review by senior decision-makers in all three countries.

LEGAL ISSUES: JAPAN CAUTIOUS, AUSTRALIA PRAGMATIC

¶4. (C) All parties agreed that the U.S.-drafted matrix provided a helpful description of the legally permissible range of activities against vessels suspected of violating UNSCR 1718. Discussion on the details of the matrix, however, revealed a divergence between a cautious Japan and an Australia willing to take a "pragmatic" approach to avoid discussions on legal issues becoming an obstacle to trilateral action on sanctions enforcement.

¶5. (C) Japanese head of delegation Ichikawa stated that all activities must conform to international law as required by paragraph 8(f) of UNSCR 1718, and Japan disagreed with the U.S. interpretation of international law on two points. First, Japan's position was that boarding and inspection of a vessel on the high seas requires flag state consent and not simply master's consent. Second, Japan does not believe that "bunkering" (i.e., stopping to take on fuel) terminates a foreign vessel's right of 'innocent passage'. Ichikawa also stated that Japanese domestic law might not permit a Japanese

role in certain activities listed in the matrix. Japan was interested in learning more about the U.S. Ship Boarding Agreements. According to Ichikawa, Japan did believe that if a ship is carrying items prohibited by UNSCR 1718, then that ship is not entitled to the right of innocent passage as that ship is acting prejudicial to the peace and good order of the coastal state. Finally, Ichikawa noted that from Japan's perspective there is no difference between a DPRK-flagged vessel and a non-DPRK-flagged vessel as broken out in the matrix.

¶6. (C) Australia was "not black-and-white" on legal issues and was in "broad agreement" on the contents of the matrix, according to Attorney General representative Greg Manning. Australia differed slightly from the U.S. on the same two issues as the Japanese: a ship's master was not always seen as having the authority to consent to boarding; and "bunkering" was not always seen as terminating a foreign vessel's right of 'innocent passage.' Australia -- or any country -- could avoid the issue raised by "bunkering" in its territorial waters, however, by adjusting its domestic regulations to prohibit fuel or resupply services from being provided to ships that fail to consent to an inspection, suggested Manning. Neither issue, he emphasized, would pose an obstacle to Australia taking part in a demonstration of sanctions implementation, said Manning. Australia would handle potential boarding or inspection scenarios in a "pragmatic, case-by-case" manner, "subject to political decision", he noted. In the case of a boarding, Australia would not object to a boarding if the Master allows it and if flag state consent is gained after the fact.

¶7. (C) OSD Associate Deputy General Counsel Gary Sharp explained that while UNSCR 1718, on its face, provided no new legal authority beyond existing national and international law, it did provide an "additional factual context" to apply those laws, revealing "hooks" that provide additional legal authority. For example, actions might be warranted from the standpoint of "self-defense," he said. In addition, the right of a warship to "approach and visit" commercial vessels (to identify a ship's flag and confirm nationality) was recognized in Article 110 of the UN Convention on the Law of the Sea.

¶ 8. (C) In the U.S. view, a ship's master generally has the authority to invite an inspecting warship to board and inspect his papers, said Sharp, but a master lacks the authority to grant a boarding party law enforcement authority (e.g., to search and seize cargo). The U.S. has 19 bilateral agreements with other countries recognizing the international right of "master's consent," he noted.

¶ 9. (C) On next steps, U.S. delegation head Steve Schleien, OSD Director for Transnational Threats Policy, offered to produce a simplified version of the matrix, as well as adjust the text to reflect slight differences in the three countries' views on "bunkering" and "master's consent."

DPRK SHIPPING PATTERNS

¶ 10. (S) In follow-up to a request for information on North Korea maritime shipping patterns at the previous 1718 Trilateral Working Group in December 2006, Alexandra Chandler of the U.S. Office of Naval Intelligence (ONI) presented a briefing on the international shipping routes most heavily trafficked by ships carrying North Korean cargo. The briefing made the following points:

- Ships carrying North Korean cargo tend to travel on the same international shipping lanes as the majority of other cargo vessels;
- 91% of North Korea's international maritime trade volume is carried on non-North Korean flagged vessels (e.g., 42% of ships calling on North Korean ports are Panamanian flagged);
- Fifty percent of North Korean-flagged cargo vessels travel between North Korean and Chinese ports on the Yellow Sea;
- North Korean-controlled vessels are generally decrepit, small in size, and frequently require "bunkering" fuel services;
- Maritime trade makes up only about 20% of North Korea's overall foreign trade.

¶ 11. (S) Chandler identified three areas of the highest concentration over time of ships carrying North Korean cargo: (1) in the South China Sea, NE of the Strait of Malacca; (2) in the South China Sea, SW of the Taiwan Straits; and (3) in the East China Sea, NE of the Taiwan Straits. The selection of these sites did not take into account political concerns, noted the briefer, but was based solely on ONI's assessment of the volume of shipping traffic.

RADIATION DETECTION COOPERATION

¶ 12. (C) Also in follow-up to the previous Trilateral Working Group in Washington, Department of Energy Assistant Deputy Administrator David Huizenga gave a briefing on the prospects for trilateral cooperation in radiation detection as a part of 1718 sanctions enforcement. Huizenga's briefing focused on the following points:

- the most reliable and accurate radiation devices were hand-held or carried in backpacks;
- to be effective in detecting radiation in the cargo of a suspect vessel, the detection devices would need to be used by someone on board that vessel;
- the U.S. was prepared to make that equipment available to Australia and Japan if desired;
- helicopter-borne 'stand-off' gamma detectors existed, but, at present were effective only for functions such as geological mapping. Additional research and development was needed to refine the technology; this could be a fruitful

area for trilateral collaboration.

-- an experts group under the 1718 Trilateral Working Group should be created to explore radiation detection cooperation further.

¶13. (C) Australian representatives agreed on the proposal to form an experts group and the suggestion for cooperative research and development on "stand-off" radiation detection technology. Japan delegation head Ichikawa agreed "in principle" to create an experts group, with the caveat that agreement should first be reached on an overall menu of trilateral action items.

OPTIONS FOR TRILATERAL ACTION

¶14. (S) U.S. delegation head Schleien outlined the U.S.-drafted "Options Paper" (ref A) and its five proposals for concrete, trilateral action to implement 1718 sanctions. The paper had been produced in follow-up to Trilateral Working Group agreement in December 2006 to generate a list of possible 1718 enforcement actions for the consideration of respective senior leadership, he noted. The five options proposed are:

-- create an enhanced inspection architecture using outreach to encourage states to make maximum use of existing national and international authorities to implement UNSCR 1718 sanctions. This effort would be focused on states at key "chokepoints" in DPRK trade, such as China, Russia, the ROK, Central Asia, and states near the Strait of Malacca and Suez Canal;

-- conduct a "capabilities demonstration" possibly involving the inspection of suspect cargo and interdiction of WMD-related items, as called for under UNSCR 1718. This might involve an Australian ship escorting a suspect vessel (role-played by a U.S. ship) into a Japanese port for inspection. The capabilities demonstration would be separate from and more modest in scale than a traditional PSI exercise;

-- implement periodic, limited-duration "scrutiny areas" on the high seas in which selected vessels would be queried

about carrying DPRK-related cargo. Naval assets from the trilateral parties would hail select vessels to ask if they were carrying cargo to or from North Korea, and whether any such cargo was on the UNSCR 1718 list of proscribed items. This might involve U.S. and Australian ships supported by Japanese P-3 surveillance aircraft, operating in a limited area over a limited number of days;

-- conduct a clandestine surveillance program to track a suspect vessel;

-- Approach and hail and/or overtly track suspect DPRK-flagged or owned/operated vessels.

¶15. (S) The Australian delegation made the following points in response:

-- the options paper was helpful in focusing trilateral efforts on concrete, "demonstrable action";

-- SCRUTINY AREAS: This idea would be "politically sensitive", depending on the proximity to coastal states and the status of diplomatic efforts on the North Korea problem. Australia did seek additional information in order to have a clear understanding of how the U.S. envisioned the scrutiny area would be constructed. Nonetheless, Australia saw "scrutiny areas" as permissible under international law and supported the concept's inclusion on a list of options for policy-makers. It would be a particularly useful option if the need arose to increase pressure on Pyongyang (e.g., if the DPRK were to conduct another nuclear test or the Six Party Talks collapse);

-- CAPABILITIES DEMONSTRATION: Australia "strongly supports" this proposal. The key will be to identify a host country;

-- OUTREACH: Australia supported this proposal and offered to produce a list of suggested actions -- including presentations and technical demonstrations -- to "dramatize" the importance of compliance with 1718 obligations. Southeast Asian countries should be a prime focus of outreach. Singapore had recently approached Australia proposing to host a workshop on 1718 compliance; Canberra would take the lead on pursuing this option further. Outreach should complement, not substitute for "demonstrable action" by the Trilateral Working Group states.

¶16. (S) The Japanese delegation provided the following feedback on the U.S. Options Paper:

-- SCRUTINY AREAS: Japan agreed with Australia about the sensitivity of scrutiny areas and was "still not certain" how this concept was legally compatible with "normal operations of ships on the high seas." After hearing the US scrutiny areas proposal Japan was relieved at the modest scale of operation envisaged but had concerns about the possibility it could lead to non-consensual boarding, for example, on the basis of "self-defense." Japan stated that it needed additional information on how a scrutiny area would be defined, operated, and what actions would be taken in that area. Defense Ministry officials noted that, while domestic law would make it difficult for Japanese naval vessels to take part, it was "doable" for P-3s to provide overhead surveillance to participating U.S. vessels, especially if the aircraft were operating in their "normal" area of operations.

A dispatch of P-3s to somewhere distant would be more problematic, as it might invite political controversy and legal challenge. The MOD official also suggested surface vessels might participate, but noted that domestic law permitted Japanese vessels to conduct maritime inspections only if a "regional contingency" had been recognized by the Japanese government (NOTE: This is a political line Japan has to date never crossed. END NOTE).

-- CAPABILITIES DEMONSTRATION: Japan was cautious about this activity "back-firing" by prompting a negative reaction from regional states. Unlike PSI, a UNSCR 1718-linked demonstration would be "clearly targeted" at one country.

-- OUTREACH: Japan was very comfortable with trilateral efforts in this area and favored a focus of the Working Group on helping regional countries identify what they can

practically do to implement UNSCR 1718. Japan supported Australia taking the lead on Southeast Asia outreach and favored a "soft, bottom-up" approach to avoid other governments getting the impression they are "being pressured" to take action to implement sanctions.

Expanding WG membership

¶17. (C) All agreed that Singapore and New Zealand would be natural members of an expanded Working Group but that no decision would be made on expansion until after the working group had agreed on concrete activities.

Next WG meeting

¶18. (S) Australia agreed to host the next Working Group meeting in late March, consecutive with a PSI Operational Experts Group meeting planned for Auckland, New Zealand.

French proposal for DPRK shipping "cartography" group

¶19. (C) Japanese delegation head Ichikawa shared a proposal from the French government to establish a working group on the "cartography" of DPRK shipping and host an initial meeting in Paris in mid-February. (Note: This is the same

proposal that the French delegation tabled at the December 2006 Montreal PSI Operational Experts Group meeting. The OEG had agreed to exchange information vice sending delegations to meet in Paris.) She noted that French officials had informed the Japanese Embassy in Paris that they had learned about the activities of the 1718 Trilateral Working Group from U.S. delegates at a "financial meeting" in Paris on February 10. Ichikawa encouraged all Trilateral WG members to maintain the confidentiality of the group's work. Japan was not inclined to agree to the French proposal for a meeting that soon, as it would lead to unnecessary duplication of effort, but might consider a meeting on the margins of the PSI gathering in Auckland. Perks indicated Australia was open to the French proposal. U.S. delegation head Schleien said he would discuss the proposal with French Embassy officials upon return to Washington but reiterated the U.S. position that, while we supported and agreed to contribute to the concept, there was no support for a meeting in Paris on this issue.

Participants

¶20. (C) The U.S. delegation was headed by Steven Schleien, Director for Transnational Threats Policy, Office of the Secretary of Defense (OSD), with the participation of 26

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representatives from OSD, State/ISN, Department of Energy, Homeland Security (Customs), the Joint Staff, the U.S. Coast Guard, DIA, the Office of Naval Intelligence, PACOM, U.S. Forces Japan, and Embassy Tokyo. Japan's delegation was headed by Tomiko Ichikawa, Director, Division of Non-Proliferation, Science and Nuclear Energy, MOFA, and included 42 officials from 12 government agencies. MOFA Deputy Director-General Masanori Nishi acted as chairman of the Trilateral Working Group proceedings. The Australian delegation was headed by Murray Perks, Assistant Secretary (DAS-equivalent), Security Policy and Programs, Department of Defence, and included 16 representatives of six different agencies.

SCHIEFFER